

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IDELEZA MEDINA,)	Civil Action No.: 19-1298
)	
Plaintiff,)	Hon. William S. Stickman, IV
)	
vs.)	
)	
PITTSBURGH FILMMAKERS, INC.)	
t/d/b/a PITTSBURGH FILMMAKERS/)	JURY TRIAL EMANDED
PITTSBURGH CENTER FOR THE)	
ARTS and PITTSBURGH CENTER)	
FOR ARTS AND MEDIA,)	
)	
Defendant.)	
	/	

AMENDED COMPLAINT

1. This action arises under the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 *et seq.* (“ADEA”), the Pennsylvania Whistleblower Law and Pennsylvania’s Wage Payment and Collection Law.

Parties

2. Plaintiff Ideliza Medina is 76 years old and resides in the Western District of Pennsylvania.

3. Defendant Pittsburgh Filmmakers, Inc. t/d/b/a Pittsburgh Filmmakers/Pittsburgh Center for the Arts and Pittsburgh Center for Arts and Media (“PFI”) is a corporation organized under the laws of the Commonwealth of Pennsylvania with offices at 477 Melwood Avenue, Pittsburgh, Pennsylvania 15213 and 6300 Fifth Avenue, Pittsburgh, Pennsylvania, 15232.

4. At all times material to this action, PFI has employed more than 20 people.

5. PFI receives money from public bodies including the County of Allegheny and the Commonwealth of Pennsylvania and is an employer within the meaning of Pennsylvania's Whistleblower Law.

Subject Matter Jurisdiction, Venue and Exhaustion

6. This Court has jurisdiction over the subject matter of Plaintiff's ADEA claims pursuant to 29 U.S.C. § 626(b)-(c). Subject matter jurisdiction over Plaintiff's state law claims vests under 28 U.S.C. § 1367.

7. Venue is proper in the Western District of Pennsylvania pursuant to 28 U.S.C. § 1391(b) and (c).

8. Plaintiff timely filed a Charge of Discrimination with the EEOC alleging age discrimination on August 6, 2019, which was cross-filed with the PHRC, which filing occurred within 180 days of the unlawful employment practices alleged in this Complaint. More than 60 days have passed since the filing of Plaintiff's Charge and Plaintiff has exhausted her administrative remedies under the ADEA. Upon the expiration of one year from the filing of her Charge, Plaintiff will amend this Complaint adding her claim under the Pennsylvania Human Relations Act.

Facts Giving Rise To This Action

9. PFI hired Plaintiff in 2000.

10. Plaintiff held the positions of Director of Finance and more recently Controller.

11. Plaintiff provided exemplary service to PFI over the two decades of her employment.

12. There are no reprimands, warnings or disciplinary memoranda in Plaintiff's personnel file.

13. On or about March 20, 2019, Plaintiff presented a Report entitled "Pittsburgh Center for the Arts and Media, Report of Mismanaged Administrative Spending" to Rick Pierchalski, the Vice President of PFI's Board of Directors, who has a background in finance and wealth management. A true and correct copy of Plaintiff's Report is attached hereto as Exhibit 1 and its contents are incorporated herein as though set forth in full.

14. Plaintiff prepared her Report with the assistance of 25 year-old, recently hired PFI employee John Fleming, a person with a past history at PFI of sharing confidential workplace information with others.

15. In her Report, Plaintiff detailed \$18,602.77 in unnecessary operating expenses incurred as a result of poor or absent planning, \$97,228.14 in operating expenses incurred as a result of the negligence or mismanagement of PFI administration, and \$133,219.00 in redundant operating expenses incurred because of incompetent decisions made by PFI administration.

16. Plaintiff expressly criticized wasteful operating expenses incurred and decisions made by PFI Chief Administration Officer Dorinda Sankey.

17. Upon information and belief, Fleming shared the information Plaintiff was compiling for her report with Sankey.

18. Although Sankey was on the verge of firing Fleming in January, 2019 for sharing confidential salary information in the workplace and undermining Sankey's authority, she had a dramatic change of heart by the second week of March, 2019. By that time, Sankey had decided to give Fleming a raise and was telling him to stand ready to assume additional responsibilities in the Finance Department which Sankey was about to restructure.

19. In early May, 2019, Ms. Sankey requested a copy of Plaintiff's Report and Plaintiff provided her one.

20. A few days later, on May 8, 2019, Ms. Sankey terminated Plaintiff's employment.

21. Sankey falsely told Plaintiff that PFI had eliminated her position.

22. In fact, Sankey replaced Plaintiff with Fleming who was 50 years younger than Plaintiff.

23. Fleming was comparatively less qualified than Plaintiff to perform the duties of Plaintiff's position.

24. At the time of her termination, Plaintiff was one of two people who were PFI's oldest employees.

25. Sankey presented her decision to terminate Plaintiff and replace her with Fleming to PFI's Board of Directors as a done deal.

26. At the time she terminated Plaintiff, Sankey also wished to terminate Joy Sato, a woman in her 80s, because of her age.

27. Pierchalski strongly cautioned against that decision. Mr. Pierchalski also disagreed with Sankey's termination of Plaintiff because he had found Plaintiff's work to be satisfactory and her work ethic and conscientiousness highly commendable.

28. Pierchalski agreed with Plaintiff's protected criticisms of Sankey's waste of PFI's funds.

29. Pierchalski pushed several times for Sankey to be terminated from employment.

30. On information and belief, Sankey and PFI's Treasurer Chris Fry (who is in his late 40s or early 50s) criticized Plaintiff behind her back for not being "technologically sophisticated," code words for the age-based stereotype that older workers are not adept with technology and cannot be trained to use technology.

31. On or about October 11, 2019, Defendant told the EEOC the following:

In or about May 2019, PCAM concluded that its business needs did not support a full-time Controller position. Rather, it was in need of a dedicated resource to handle a broad base of operational and administrative tasks – including, by way of example, its project bid processes, contract negotiations, facilities management, financial planning and accounting, and information technology and human resources functions. Therefore, it opted to eliminate the Controller position and create the more comprehensive Director position. When PCAM notified Ms. Medina of these changes, it invited her to apply for the Director position. Ms. Medina declined.

32. Contrary to what Defendant told the EEOC, Defendant did not decide to hire a superman-like Director with concurrent expertise in fields as divergent as human resources, IT, financial planning and accounting, facilities management, contract negotiations and project bid processes. It is unlikely that such a person even exists.

33. Defendant did not create or fill “the more comprehensive Director position.”

34. Defendant did not invite Plaintiff to apply for the “more comprehensive Director position.”

35. Plaintiff did not decline an invitation to apply for “the more comprehensive Director position.”

36. At the time of her termination, Plaintiff had approximately 33 days of earned, vested, accrued but unused vacation time.

37. All or some portion of these days were banked prior to January 1, 2019.

38. At all times prior to January 1, 2019, Defendant had an implied in fact contract with its employees to pay them their accrued but unused vacation time upon separation from employment. This contract arose from Defendant’s past practice of actually paying departing employees for such time.

39. On information and belief, in January, 2019 Defendant may have inserted language into its employee handbook to the effect that going forward in time Defendant would no longer pay departing employees their earned but unused vacation time.

40. On further information and belief, whatever change Defendant intended to effect through the revision of its employee handbook did not affect employees such as Plaintiff, whose right to be paid unused vacation time vested prior to January, 2019.

41. At no time did Defendant intend to divest employees such as Plaintiff of their future right to be paid previously earned wages or wage supplements.

Count I – ADEA

Disparate Treatment Involving Termination

42. Plaintiff incorporates by reference the allegations above as though set forth in full.

43. Defendant terminated Plaintiff because of her age in violation of the Age Discrimination in Employment Act, 29 U.S.C. §623(a)(1).

44. Defendant's violation of the ADEA was willful.

45. As the direct result of Defendant's age discrimination, Plaintiff sustained personal and financial injuries.

WHEREFORE, Plaintiff demands judgment as follows:

- a. That Defendant be ordered to pay Plaintiff back pay and benefits with interest;
- b. That Defendant be ordered to reinstate Plaintiff to her former position with all lost pay and benefits, seniority and promotions;
- c. That Defendant be required to pay Plaintiff front pay and benefits in the event reinstatement is not feasible;
- d. That a final judgment in favor of Plaintiff and against Defendant be entered for liquidated damages in an amount equal to the amount of wages due and owing Plaintiff;

- e. That Plaintiff be awarded the costs and expenses of this litigation and her reasonable attorney fees;
- f. That Plaintiff be awarded compensation for the adverse tax consequences of her recovery of wages and benefits in a lump sum, and,
- g. That Plaintiff be granted such further legal and equitable relief as the Court may deem just and proper.

Counts II – Pennsylvania Whistleblower Law

Wrongful Termination

- 46. Plaintiff incorporates by reference the allegations above as though set forth in full.
- 47. Defendant receives public grants on an annual basis from both the Allegheny County Regional Asset District (“ARAD”) and the Commonwealth of Pennsylvania Council for the Arts.
- 48. In 2018, Defendant received \$230,000 from ARAD for general operating expenses.
- 49. In 2018, Defendant received \$58,000 or more from the Commonwealth Council for the Arts for general operating expenses.
- 50. The funds described in the immediately preceding paragraphs were direct deposited into a single checking account that Defendant maintained for operating expenses.
- 51. The wasteful operating expenses of which Plaintiff complained in good faith as set forth above and in Exhibit 1 were paid from the account holding the public funds from ARAD and the Commonwealth.
- 52. Defendant fired Plaintiff because she made a good faith report to Defendant of wrongdoing and/or waste within the meaning of Pennsylvania’s Whistleblower Law.
- 53. As the direct result of the wrongful termination of her employment, Plaintiff sustained personal and financial injuries.

WHEREFORE, Plaintiff demands the relief set forth in Count I, excluding liquidated damages, but adding compensatory damages.

Count III – Wage Payment and Collection Law

54. Plaintiff incorporates all paragraphs above as though set forth in full.
55. PFI has failed and refused to pay Plaintiff her earned, vested, accrued but unused vacation time.
56. In failing to pay Plaintiff her earned, vested, accrued but unused vacation days, Defendant violated Pennsylvania's Wage Payment and Collection Law ("WPCL").
57. Defendant's violation of the WPCL was willful.
58. As the direct result of Defendant's violation of the WPCL, Plaintiff has sustained financial injuries.

WHEREFORE, Plaintiff demands payment for her earned, vested, accrued but unused vacation time, liquidated damages, and case costs including reasonable attorney fees.

Respectfully submitted,

s/ Charles A. Lamberton
Lamberton Law Firm, LLC
Pa. I.D. No. 78043
707 Grant Street, 1705 Gulf Tower
Pittsburgh, PA 15219
412-258-2250 - O
412-498-4120 - C (24/7)
cal@lambertonlaw.com

Counsel for Plaintiff
November 21, 2019